UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

WESTERN CARPET CENTER, INC., on behalf of itself and all others similarly situated, Plaintiff, v. HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES, INC., DOMFOAM INTERNATIONAL, INC., THE CARPENTER COMPANY, THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC., VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC. Defendants.	**Case No. 5:10-cv-154** **Related to 5:10-cv-111** **MDL No. 2196** **CLASS ACTION COMPLAINT**

Plaintiff Western Carpet Center, Inc. ("Plaintiff"), individually and on behalf of the Class defined below consisting of all those similarly situated direct purchasers of polyurethane foam, brings this action against defendants The Carpenter Company, Domfoam International, Inc., Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Hickory Springs Manufacturing Company, Scottdel, Inc., Valle Foam Industries, Inc., Vitafoam, Inc., Vitafoam Products Canada Limited, and The Woodbridge Group (collectively, "Defendants") for damages and injunctive relief under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the

Clayton Act, 15 U.S.C. § 15.

Plaintiff respectfully demands a trial by jury, and complains and alleges on information and belief as follows:

NATURE OF THE ACTION

1. Between at least as early as January 1, 1999 and the present, Defendants have combined, conspired and agreed to fix, inflate and maintain prices for polyurethane foam and polyurethane foam products (collectively "polyurethane foam") in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C.§1.

2. Defendants have implemented their combination, conspiracy and agreement through the mechanisms alleged herein.

3. Upon information and belief, in or around February 2010, Defendant Vitafoam voluntarily approached the U.S. Department of Justice ("DOJ") Antitrust Division in order to report antitrust violations in the polyurethane foam industry and to seek acceptance into the DOJ's Corporate Leniency Program.

4. Several months later, during or around the week of July 26, 2010, it was reported that the Federal Bureau of Investigation ("FBI"), in connection with a "multi-jurisdiction investigation of the pricing practices of polyurethane foam products," raided the offices of certain Defendants.

5. At or about the same time, the European Commission ("EC") conducted similar raids of certain Defendants' offices in Europe.

6. As a direct result of Defendants' conspiratorial conduct in violation of Section 1 of the Sherman Antitrust Act, prices for polyurethane foam have been fixed, inflated and maintained at supra-competitive levels that have been paid by Plaintiffs and the members of the proposed Class.

7. The payment of supra-competitive prices by Plaintiffs and members of the proposed Class is antitrust injury of the type that the federal laws were meant to punish and prevent.

JURISDICTION AND VENUE

8. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and §26, to recover treble damages and costs of suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiff and the members of the Class by reason of the violations of Section 1 of the Sherman Act, 15 U.S.C. §1, as alleged herein.

9. In addition, Plaintiff institutes this action to secure injunctive relief against Defendants to prevent them from further violating Section 1 of the Sherman Act as alleged in this Complaint. Absent injunctive relief, the agreements and industry structure alleged herein will continue to violate or threaten violations of U.S. antitrust laws.

10. This Court has subject matter jurisdiction of this case under 28 U.S.C. §1331 and §1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §15 and §26.

11. Venue is proper in this Judicial District pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §15, §22 and §26, and 28 U.S.C. §1391(b), (c), and (d) because at all times relevant to the Complaint, Defendants transacted business, were found, or acted through subsidiaries or agents present in this District. Additionally, a substantial part of the interstate commerce involved and affected by the alleged violations of the antitrust laws was and is carried on in part within this District. The acts complained of have had, and will have, substantial anti-competitive effects within this District.

12. The Court has *in personam* jurisdiction over each of the Defendants because, *inter alia*, each of the Defendants: (a) committed acts in furtherance of the conspiracy alleged herein in this District and directed the unlawful conspiracy through persons and entities located in this

District, including fixing the prices of polyurethane foam sold to purchasers in this District; (b) transacted business in polyurethane foam and other products in this District; (c) maintains and has maintained continuous and systematic contacts with this District over a period of years; and (d) purposefully availed itself of the benefits of doing business in this District. Accordingly, each of the Defendants maintains minimum contacts with this District more than sufficient to subject it to service of process and sufficient to comply with due process of law.

PARTIES

13. Plaintiff Western Carpet Center, Inc. is a Washington corporation with its principal place of business in Lynnwood, Washington. During the Class Period, Western Carpet Center, Inc. purchased polyurethane foam directly from one or more of the named Defendants or their co-conspirators, and has been injured by reason of the antitrust violations alleged in this Complaint.

14. Defendant The Carpenter Company ("Carpenter") is a privately owned and operated company with its headquarters located at 5016 Monument Avenue, Richmond, Virginia 23230.

15. Defendant Domfoam International, Inc. ("Domfoam") is a subsidiary of Valle Foam Industries with its headquarters located at 8785 Langelier Blvd., Montreal, Quebec, H1P 2C, Canada.

16. Defendant Flexible Foam Products, Inc. ("Flexible Foam") is a privately owned and operated Ohio company with its headquarters located at 12575 Bailey Road, Spencerville, Ohio 45887 with operations in Texas, Indiana, Florida and Wisconsin. Flexible Foam is a subsidiary of Ohio Decorative Products, Inc., also of Spencerville, Ohio.

17. Defendant Foamex Innovations, Inc., formerly known as Foamex International, Inc. ("Foamex"), is a privately owned and operated company with its headquarters located at

Rose Tree Corporate Center II, 1400 N. Providence Road, Suite 2000, Media, Pennsylvania 19063.

18. Defendant Future Foam, Inc. ("Future Foam") is a privately owned and operated company with its headquarters located at 1610 Avenue N, Council Bluffs, Iowa 51501.

19. Defendant Hickory Springs Manufacturing Company ("Hickory Springs") is a North Carolina corporation with its headquarters located at 235 2nd Avenue, NW, Hickory, North Carolina 28601.

20. Defendant Scottdel, Inc. ("Scottdel") is a privately held corporation with its headquarters located at 400 Church Street, Swanton, Ohio 43558.

21. Defendant Valle Foam Industries, Inc. ("Valle") is a privately owned and operated corporation with its headquarters located at 4 West Dr., Brampton, Ontario L6T 2H7, Canada.

22. Defendant Vitafoam, Inc. is a privately owned and operated company with its headquarters located at 2215 Shore Drive, High Point, North Carolina 27263.

23. Defendant Vitafoam Products Canada Limited ("Vitafoam Canada") is a privately owned and operated company with its headquarters located at 150 Toro Road, North York, Ontario M3J 2A9, Canada. Vitafoam Canada and Vitafoam, Inc. are collectively referred to herein as "Vitafoam."

24. Defendant The Woodbridge Group ("Woodbridge") is a Canadian corporation with its headquarters located at 4240 Sherwoodtowne Blvd., Mississauga, Ontario, L4Z 2G6, Canada.

25. John Doe Defendants 1-10 include various individuals, partnerships, corporations, and associations, the identities of which are presently unknown to Plaintiff, and have participated in the violations alleged herein and have performed acts and made statements in furtherance

thereof. When and if Plaintiff learns the identities of such co-conspirators, Plaintiff may seek leave to amend this complaint to add such co-conspirators as defendants.

26. The acts alleged against the corporate Defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management of Defendants' businesses or affairs.

27. All averments herein against any named Defendant are also averred against these unnamed co-conspirators as though set forth at length.

28. The acts that this Complaint alleges were done by each of the co-conspirators, were fully authorized by each of those co-conspirators, or ordered, or done by duly authorized officers, agents, employees, or representatives or each co-conspirator while actively engaged in the management, direction, or control of its affairs.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of itself and as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

> All persons (excluding governmental entities, Defendants, their subsidiaries and affiliates, and their co-conspirators) who directly purchased polyurethane foam from any of the Defendants or any subsidiary or affiliate thereof or their unnamed co-conspirators, at any time during the period from January 1, 1999 to the present (the "Class").

30. Plaintiff does not know the exact size of the Class because such information is in the exclusive control of the Defendants. Due to the nature of the trade and commerce involved, Plaintiff believes that the Class numbers at least in the thousands and knows that members of the Class are geographically dispersed throughout the United States. Joinder of all Class members in this action is impracticable.

31. Plaintiff's claims are typical of the claims of the members of the Class because

Plaintiff and all Class members are all direct purchasers of polyurethane foam who paid artificially inflated prices due to Defendants' conspiracy or combination alleged herein.

32. Plaintiff will fairly and adequately protect the interests of the Class as the interests of Plaintiff are coincident with, and not antagonistic to, those of the Class. In addition, Plaintiff are represented by counsel experienced and competent in the prosecution of class action antitrust litigation.

33. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

34. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual members. Among the questions of law and fact common to the Class are:

a. whether Defendants and their co-conspirators combined, conspired or agreed to fix, inflate or maintain prices;

b. the extent and duration of such agreement(s), combination(s) or conspiracy(ies);

c. the methods and mechanisms by which Defendants effectuated same;

d. the role of each Defendant therein;

e. whether Defendants' conspiratorial conduct violated Section 1 of the Sherman Act;

f. whether Defendants and their co-conspirators took affirmative steps to conceal their agreement(s);

g. whether Defendants' conspiratorial conduct caused the prices of polyurethane foam to be inflated;

h. the appropriate measure of monetary relief, including the appropriate measure of damages; and

i. whether Plaintiff and Class members are entitled to declaratory and/or injunctive relief.

35. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class is readily ascertainable from the Defendants' records.

36. Defendants have acted on grounds generally applicable to the entire Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

INJURY TO PLAINTIFF AND CLASS MEMBERS

37. During the Class Period, Plaintiff and members of the Class purchased polyurethane foam from the Defendants.

38. As a direct result of Defendants' conspiratorial conduct in violation of Section 1 of the Sherman Antitrust Act, prices for polyurethane foam have been fixed, inflated and maintained at supra-competitive levels that have been paid by Plaintiff and the members of the proposed Class.

39. By reason of the alleged violations of the U.S. antitrust laws, Plaintiff and members of the Class have been injured in their business and property and have suffered damages in an amount presently undetermined.

40. The anticompetitive conduct complained of herein will continue (and to the extent temporarily and only partially abandoned, will resume) absent an injunction. Plaintiff and members of the Class are likely to continue buying polyurethane foam in the future and will be repeatedly injured unless the continuation of this anticompetitive conduct is enjoined.

TRADE AND COMMERCE

41. Beginning at least as early as January 1, 1999, and continuing until the present, the exact dates unknown to Plaintiffs at this time, Defendants engaged in a continuing conspiracy or combination in restraint of trade in violation of the Sherman Act.

42. During the Class Period, Defendants sold polyurethane foam in a continuous and uninterrupted flow in interstate commerce to customers located in States other than where Defendants produced their polyurethane foam.

43. Defendants' business activities that are the subject of this Complaint were within the flow of and substantially affected interstate trade and commerce. The collusive behavior alleged in this Complaint has a direct, substantial and foreseeable adverse impact on U.S. commerce.

SUBSTANTIVE ALLEGATIONS

44. According to the Polyurethane Foam Association ("PFA"), polyurethane foam is "...a chemically complex polymeric product having a broad range of load bearing capability and resiliency, offering comfort as cushioning material for furniture, bedding, carpet underlay, and automotive interiors. [Polyurethane foam] also offers protective shock absorption performance for use in packaging and automotive applications." http://www.pfa.org/faq.html.

45. There are few acceptable alternatives for polyurethane foam. In furniture and bedding applications, short staple polyester fiber or cotton may be used, but both alternative materials have poor height recovery characteristics after compression. Steel springs also recover well, but must be insulated from the user with some type of cushioning material. According to the Polyurethane Foam Association, "comparing [polyurethane foam] to alternative materials in the areas of economics, comfort potential, ease of use, and durability, there is not an acceptable substitute for polyurethane foam."

46. In 2009 alone, revenue in the polyurethane foam industry was greater than $11 billion.

47. Defendants are among the largest and leading providers of polyurethane foam in the United States and worldwide. During the Class Period, Defendants handled a substantial percentage of polyurethane foam business and possess significant market share.

48. There has been a recent trend towards consolidation within the industry. Major players within this industry have been active in acquiring smaller companies and other competitors over the course of the last ten years. For example, in 2007, Defendant Carpenter acquired its European competitor, Dumo NV. Carpenter owns approximately 16.3% of the market share in this industry.

49. Defendants alleged here to be participants in the conspiracy are most of the major North American polyurethane foam producers representing a significant portion of the United States market. There are virtually no imports of products in this industry due to the prohibitive freight costs involved in transporting these bulky, low unit priced products over long distances.

50. Plaintiff and other Class members purchase polyurethane foam from Defendants and incorporate same into a variety of consumer products such as those mentioned above.

51. Polyurethane foam is commodity-like and highly fungible. That is, polyurethane

foam provided by one Defendant is readily substitutable for polyurethane foam provided by another Defendant, and, therefore, sales are driven primarily by price.

52. The polyurethane foam industry has substantial barriers to entry. To enter and maintain a viable competitive presence in the polyurethane foam industry requires an expenditure of capital investment and other resources over a long period of time. New entry is thus both expensive and risky.

53. Upon information and belief, in or around February 2010, Defendant Vitafoam voluntarily approached the DOJ in order to report antitrust violations in the polyurethane foam industry and to seek acceptance into the DOJ's Corporate Leniency Program.

54. Upon information and belief, as a result of its application, Vitafoam has received a conditional leniency letter from the DOJ's Antitrust Division. This fact, in and of itself, is significant. It means that Vitafoam has admitted to participation in a conspiracy to violate the antitrust laws. The significance of obtaining a conditional leniency letter was explained in November 19, 2008 by Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement:

> *Does a leniency applicant have to admit to a criminal violation of the antitrust laws before receiving a conditional leniency letter?*
>
> Yes. The Division's leniency policies were established for corporations and individuals "reporting their illegal antitrust activity," and the policies protect leniency recipients from criminal conviction. Thus, the applicant must admit its participation in a criminal antitrust violation involving price fixing, bid rigging, capacity restriction, or allocation of markets, customers, or sales or production volumes before it will receive a conditional leniency letter. Applicants that have not engaged in criminal violations of the antitrust laws have no need to receive leniency protection from a criminal violation and will receive no benefit from the leniency program.
>
> When the model corporate conditional leniency letter was first drafted, the Division did not employ a marker system. Thus, companies received conditional leniency letters far earlier in the process, often before the company had an opportunity to conduct an internal investigation. However, the Division's practice

> has changed over time. The Division now employs a marker system, and the Division provides the company with an opportunity to investigate thoroughly its own conduct. While the applicant may not be able to confirm that it committed a criminal antitrust violation when it seeks and receives a marker, by the end of the marker process, before it is provided with a conditional leniency letter, it should be in a position to admit to its participation in a criminal violation of the Sherman Act. The Division may also insist on interviews with key executives of the applicant who were involved in the violation before issuing the conditional leniency letter. A company that argues that an agreement to fix prices, rig bids, restrict capacity, or allocate markets might be inferred from its conduct but that cannot produce any employees who will admit that the company entered into such an agreement generally has not made a sufficient admission of criminal antitrust violation to be eligible for leniency. A company that, for whatever reason, is not able or willing to admit to its participation in a criminal antitrust conspiracy is not eligible for leniency. Previously the model conditional leniency letters referred to the conduct being reported as "possible […price fixing, bid rigging, market allocation] or other conduct violative of Section 1 of the Sherman Act."

http://www.usdoj.gov/atr/public/criminal/239583.htm.

55. Several months later, during or around the week of July 26, 2010, it was reported that the FBI, in connection with a "multi-jurisdiction investigation of the pricing practices of polyurethane foam products," raided the offices of certain Defendants' offices.

56. On or about July 27, 2010, news organizations reported that United States FBI agents raided the offices of defendant Carpenter in connection with its potential involvement in a world-wide price fixing and market allocation conspiracy in the market for polyurethane foam. News services reported that FBI agents took boxes and bags of information out of the building and forced several of its offices to close. One employee told a local television station that FBI agents would not let her get next to her computer and an IT employee stated, "company supervisors sent them home by departments and they were the last to leave."

57. The raid conducted in Virginia was part of a coordinated worldwide probe in the polyurethane foam market conducted by United States, European Union ("EU") and Canadian competition regulators.

58. On August 3, 2010, the European Commission ("EC") confirmed in a press

release that on July 27, 2010, the EC carried out unannounced inspections at the premises of producers of polyurethane foam for potential violations of EU Treaty Rules, which, inter alia, prohibit certain anti-competitive practices. The inspections were carried out in several EU member states, including Belgium, United Kingdom and Austria.

59. The United States Department of Justice, through a spokesperson, also confirmed the raid and stated, “they can't comment on the case because it's sealed under a judge's court order.”

60. Separately, Carpenter responded to these various press reports confirmed the various government investigations, stating, “[i]n connection with a multi-jurisdiction investigation of the pricing practices related to polyurethane foam in North America and Europe, the US Government, the European Commission and the Ontario Commissioner of Competition have required that several manufacturers of polyurethane foam, including Carpenter Co. and several of its subsidiaries, produce certain information and documents. Carpenter Co. is being fully responsive and cooperative with these entities to facilitate their review.”

61. Defendants’ memberships in trade associations, such as those described below, gave them ample opportunities to meet and secretly engage in collusive conduct under the pretext of engaging in lawful activity.

62. For example, certain Defendants are members of the PFA trade organization. Approximately 70% of polyurethane foam manufacturers in the United States are members of the PFA.

63. For another example, certain Defendants are members of the International Sleep Products Association (“IPSA”) trade organization.

TOLLING OF STATUTE OF LIMITATIONS AND FRAUDULENT CONCEALMENT

64. Defendants engaged in successful conspiratorial conduct that, by its nature, was

inherently self-concealing.

65. Plaintiff and the Class members could not have discovered Defendants' conspiratorial conduct at an earlier date by the exercise of reasonable diligence. This is because of the inherently self-concealing nature of a conspiracy as well as deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, such conspiratorial conduct.

66. The agreements of the Defendants herein alleged were wrongfully concealed and carried out in a manner that precluded detection.

67. By virtue of such conduct by Defendants and their co-conspirators, and for other reasons, the running of any statute of limitations has been tolled and suspended with respect to any claims that Plaintiff and the other Class members have as a result of the unlawful conspiracy violations and conspiratorial conduct alleged in this Complaint.

68. In addition, Defendants and their co-conspirators have committed continuing violations of the antitrust laws resulting in monetary injury to Plaintiff. These violations constitute injurious acts which restart the applicable statute of limitations.

COUNT I

Per Se Violations of Section 1 of The Sherman Antitrust Act

69. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

70. Between at least as early as January 1, 1999 and the present, Defendants have combined, conspired and agreed to fix, inflate and maintain prices for polyurethane foam in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C.§1.

71. Defendants have implemented their combination, conspiracy and agreement through the mechanisms alleged herein.

72. As a direct and proximate result of Defendants' conspiratorial conduct in violation of Section 1 of the Sherman Antitrust Act, prices for polyurethane foam have been fixed, inflated and maintained at supra-competitive levels that have been paid by Plaintiff and the members of the proposed Class.

73. Plaintiff and members of the Class have thereby been injured and are entitled to recover damages, including treble damages, sustained pursuant to Section 4 of the Clayton Act, 15 U.S.C. §15.

74. The conduct of the Defendants alleged herein constitute *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. §1.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

A. That the Court determine that the Sherman Act claims contained herein may be maintained as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, and that Plaintiff be found to be an adequate class representative;

B. That Defendants' unlawful agreements, conspiracies or combinations alleged herein each be adjudged and decreed to be a *per se* violation of Section 1 of the Sherman Act;

C. That Plaintiff and the Class recover damages as provided by law, and that a joint and several judgment in favor of Plaintiff and the Class be entered against the Defendants in an amount to be trebled in accordance with the antitrust laws;

D. That Defendants be permanently enjoined and restrained from in any manner continuing, maintaining, or renewing the conspiratorial conduct alleged herein or proved at trial;

E. That Plaintiff and members of the Class be awarded pre and post-judgment interest and that interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

F. That Plaintiff and members of the Class recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

G. That Plaintiff and members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

DATED this 15th day of October, 2010.

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